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ANAHEIM MANUFACTURING CO.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANAHEIM MANUFACTURING
CO.,

Plaintiff,

v.

EMERSON ELECTRIC CO.,

Defendant.

Case No. CV 12-04528 DDP (JPRx)

**ORDER GOVERNING
INADVERTENT DISCLOSURE AND
THE PROTECTION OF
CONFIDENTIAL DOCUMENTS AND
MATERIALS**

The scope of and procedures governing discovery in this case shall be as follows:

1. **Inadvertent Disclosure of Privileged Materials:**

(a) If information subject to a claim of attorney-client privilege, work-product immunity, or other privilege, doctrine, right, or immunity is nevertheless inadvertently or unintentionally produced, such production shall in no

1 way prejudice or otherwise constitute a waiver or estoppel as to any such privilege,
2 doctrine, right, or immunity.

3 (b) Any party or third-party disclosing or producing documents,
4 information, or materials ("Producing Party") in connection with discovery in this
5 case ("Discovery Material") that inadvertently produces information that it
6 believes is protected by the attorney-client privilege, work-product immunity, or
7 other privilege, doctrine, right, or immunity may obtain the return of that
8 Discovery Material by promptly notifying the receiving party ("Receiving Party")
9 upon learning of the inadvertent production. If a Receiving Party receives
10 materials that bear a legend or other marking indicating that the materials are
11 subject to an attorney-client privilege, work-product protection or other privilege
12 or immunity that would otherwise attach to the document or information and
13 where it is reasonably apparent that the materials were provided or made
14 available through inadvertence, the Receiving Party must refrain from examining
15 the materials any more than is essential to ascertain if the materials are
16 privileged, and shall immediately notify the Producing Party in writing that it
17 possesses material that appears to be privileged.

18 (c) Upon receiving notification under subsection 1(b) above, the
19 Receiving Party shall gather and return to the Producing Party all copies of the
20 Discovery Material identified as inadvertently produced, or destroy all copies and
21 certify such to the Producing Party. Within five days after receiving the returned
22 Discovery Material, the Producing Party shall provide a privilege log for those
23 materials.

24 (d) Nothing in this Stipulation shall prevent the Receiving Party
25 from challenging the propriety of the attorney-client privilege or work-product
26 immunity or other applicable privilege or immunity designation (based on
27 information independent of the content of the asserted privileged materials) before
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1 the Court. Unless and until the Court rules in favor of the Receiving Party on such
 2 challenge and grants use of the Discovery Material at issue, the Receiving Party
 3 shall not use or refer to the Discovery Material, including in deposition, any
 4 hearing, or in any filing unrelated to the challenge itself. Notwithstanding this
 5 provision, outside litigation counsel of record are not required to delete
 6 information that may reside on their respective firm's electronic back-up systems
 7 or a vendor's systems that are over-written in the normal course of business.

8 **2. Protecting the Confidentiality of Documents and Materials:**

9 In order to protect confidential information obtained from or disclosed by
 10 any Producing Party in connection with this case and pursuant to the Court's
 11 authority under Federal Rule of Civil Procedure 26(c) and Federal Rule of
 12 Evidence 502, Plaintiff and Defendant submit as follows:

13 (a) **Purposes and Limitations:**

14 (i) Disclosure and discovery activity in this case are likely to
 15 involve production of confidential, proprietary, or private information for which
 16 special protection from public disclosure and from use for any purpose other than
 17 prosecuting this litigation would be warranted. The unrestricted disclosure of such
 18 information would cause undue damage to the parties, third-parties, and their
 19 businesses. The parties acknowledge, as set forth in subsection 2(h) below, that this
 20 Order creates no entitlement to file confidential information under seal; Civil Local
 21 Rule 79-5 sets forth the procedures that must be followed, and reflects the standards
 22 that will be applied, when a party seeks permission from the Court to file material
 23 under seal.

24 (ii) Documents and other information produced in connection
 25 with this case shall be used solely for purposes of prosecuting, defending, or
 26 attempting to settle this case, whether such information is designated as
 27 Confidential Information or not, except as otherwise noted herein. The additional
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1 protections outlined in this Order, however, apply only to Confidential Information
2 which has been appropriately designated as such.

3 (b) Nondisclosure of Confidential Information: Except as provided
4 below or with the prior written consent of the Producing Party originally
5 designating a document, discovery response, or deposition transcript as
6 “Confidential,” Confidential Information as defined herein may not be disclosed to
7 any person. Nothing herein, however, shall be construed as restricting any party’s
8 ability to use its own Confidential Information.

9 (c) Designating Confidential Material:

10 (i) A Producing Party may designate as confidential (by
11 stamping the document “Confidential” or as otherwise set forth herein) any
12 document, response to discovery, or deposition transcript which that Producing
13 Party considers in good faith to contain information involving trade secrets,
14 confidential business or financial information subject to protection under
15 California or federal law, or another applicable legal standard (“Confidential
16 Information”).

17 (ii) A Producing Party may designate information disclosed
18 by it during a deposition or in response to written discovery as “Confidential” by
19 so indicating in said responses or on the record at the deposition and requesting the
20 preparation of a separate transcript of such material. Additionally, a Producing
21 Party may designate in writing, within 21 days after receipt of (1) discovery
22 responses or (2) the final deposition transcript for which a Confidential designation
23 is proposed, that the discovery responses and/or transcript be treated as
24 Confidential Information. Any other party or third-party may object to such
25 proposal, in writing or on the record. Upon such objection, the parties shall follow
26 the procedures described in subsection 2(e) below. Deposition transcripts shall be
27 treated in their entirety as Confidential Information for 31 days after receipt of the
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1 final transcript. All parties shall affix the legend required by this subsection 2(c)
 2 on any deposition transcript designated Confidential at the deposition or by
 3 subsequent written notice.

4 (iii) If it comes to a Producing Party's attention that
 5 information or items that it designated for protection do not qualify for protection
 6 at all, the Producing Party must promptly notify all other parties that it is
 7 withdrawing the mistaken designation.

8 (iv) If timely corrected, an inadvertent failure to designate
 9 qualified information or items as Confidential Information does not, standing
 10 alone, waive the Producing Party's right to secure protection under this Order for
 11 such material. If material is appropriately designated as Confidential Information
 12 after the material was initially produced, the Receiving Party, on timely
 13 notification of the designation, must make reasonable efforts to assure that the
 14 material is treated in accordance with the provisions of this Order.

15 (d) Permissible Disclosures:

16 (i) Confidential Information that is designated as such in
 17 accordance with the terms of this Order shall not be disclosed to any person other
 18 than the following, and only to the extent necessary to litigate this action:

19 (1) counsel and co-counsel for the respective parties or
 20 third-parties to this litigation, including in-house counsel actively involved in the
 21 oversight of this action;

22 (2) employees of such counsel;

23 (3) any current or former officer or employee of a party
 24 or non-party, to the extent deemed necessary by counsel for the prosecution or
 25 defense of this action;

26 (4) consultants, mock jurors, or expert witnesses
 27 retained for the prosecution or defense of these actions, provided that each such
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1 person shall execute a copy of the certification annexed to this Order as Exhibit A
 2 before being shown or given any Confidential Information;

3 (5) the original authors or recipients of the Confidential
 4 Information;

5 (6) any officer or employee of the Producing Party;

6 (7) the Court, court personnel, and court reporters;

7 (8) witnesses who testify at deposition, provided that
 8 such witnesses shall execute a copy of the certification annexed to this Order as
 9 Exhibit A before being shown or given any Confidential Information; and

10 (9) persons or entities that provide litigation support
 11 services for counsel of record in this matter (*e.g.*, photocopying; videotaping;
 12 translating; preparing exhibits or demonstrations; organizing, storing, or retrieving
 13 data in any form or medium; etc.) and their employees and subcontractors.

14 (ii) A Producing Party may further restrict the use and
 15 disclosure of highly sensitive Confidential Information by additionally designating
 16 them as "Counsel Only." This designation shall be made in the same manner as
 17 materials are designated Confidential by the addition of the words "Counsel Only"
 18 to the legend appearing on the face of any document, response to discovery, or
 19 deposition transcript, or by written notice to all parties specifying the Bates
 20 numbers of the documents subject to Counsel Only restrictions. Further,
 21 Confidential Information designated as Counsel Only may not be disclosed to
 22 deposition witnesses except (1) witnesses that are current or former officers or
 23 employees of the Producing Party, or (2) with the prior written consent of the
 24 Producing Party. Confidential Information designated as Counsel Only may be
 25 disclosed only to persons identified in subsections 2(d)(i)(1), (2), (4), (5), (6), (7),
 26 and (9), consistent with the terms of this Order.
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1 (iii) The manner in which Confidential Information shall be
 2 used with witnesses in connection with any other open proceeding shall be
 3 addressed with the presiding judicial officer at or prior to the commencement of
 4 such proceeding, or at another appropriate time specified by the presiding judicial
 5 officer.

6 (e) Resolving Disputed Classifications: The following shall govern
 7 objections to a Confidential designation:

8 (i) Designation Objection: The objecting Party shall identify
 9 with specificity – by individual document control numbers, deposition transcript
 10 page and line reference, or other means sufficient to specifically identify and locate
 11 such materials – the disputed Confidential designation. The objecting Party also
 12 shall state briefly with respect to each issue the objecting Party's position (and
 13 provide any legal authority which the objecting Party believes is dispositive of the
 14 dispute as to that position), specify the terms of the discovery order to be sought,
 15 and request an in-person or telephonic conference within ten days per Local Rule
 16 37-1. Blanket or mass confidentiality challenges are not permitted. A Designation
 17 Objection will trigger an obligation on the part of the Producing Party to make a
 18 good faith determination of whether the disputed designation is entitled to be
 19 treated as Confidential Information pursuant to the terms of this Order. At or prior
 20 to the in-person or telephonic conference per Local Rule 37-1, the Producing Party
 21 shall respond to the Designation Objection either by agreeing to remove the
 22 Confidential designation or by stating the Producing Party's refusal to do so and
 23 basis for same.

24 (ii) Court Determination: Any remaining areas of
 25 disagreement after the in-person or telephonic conference may be presented to the
 26 Court in accordance with Local Rule 37-1 through Local Rule 37-4.
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1 (iii) Pending a ruling, the disputed designation shall continue
2 to be treated as Confidential Information under the terms of this Order.

3 (iv) Nothing in this Order shall be deemed to prevent a
4 Producing Party from arguing during the determination process for limits on the
5 use, manner, or dissemination of information that is found to no longer constitute
6 Confidential Information.

7 (f) Confidential Information at Trial: The terms of this Order do not
8 preclude, limit, restrict, or otherwise apply to the use of documents or witnesses at
9 trial. The manner in which Confidential Information may be offered in evidence at
10 trial will be addressed at the final pre-trial conference or at another appropriate time
11 specified by the presiding judicial officer. Subject to any further direction from or
12 modification by the presiding judicial officer, the parties shall give a non-party
13 Producing Party ten days advance notice of trial in connection with which the
14 Producing Party's Confidential Information may be used or presented.

15 (g) Subpoena by Other Courts or Agencies: If at any time any
16 Confidential Information is subpoenaed by a court, administrative or legislative
17 body, or by any other person or entity purporting to have authority to require the
18 production of such information, the person to whom the subpoena or similar request
19 is directed shall give written notice thereof to any person who has designated such
20 information as Confidential Information within five days. After receipt of the
21 notice specified under this subsection, the person seeking to maintain
22 confidentiality shall have the sole responsibility for obtaining any order it believes
23 necessary to prevent disclosure of the Confidential Information that has been
24 subpoenaed. If the person seeking to maintain confidentiality does not move for a
25 protective order within the time allowed for production by the subpoena (or within
26 such time as a court may direct or as may be agreed upon between the designating
27 person and the subpoenaing party) and give written notice of such motion to the
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1 subpoenaing party and the person to whom the subpoena is directed, the person to
 2 whom the subpoena or other request is directed may commence production in
 3 response thereto. The person to whom the subpoena is directed shall not produce
 4 any Confidential Information while a motion for a protective order brought
 5 pursuant to this subsection is pending, or while any appeal from or request for
 6 appellate review of such motion is pending, unless ordered by a court to do so.

7 (h) Filing Documents Under Seal: No Confidential Information
 8 shall be filed in the public record without the written permission of the Producing
 9 Party, or a court's order. The parties shall comply with Civil L.R. 79-5.

10 (i) Non-Termination: All provisions of this Order restricting the
 11 communication or use of Confidential Information shall continue to be binding
 12 after the conclusion of this action, unless otherwise agreed or ordered. Upon the
 13 conclusion of the litigation, including any appeals, a party in the possession of
 14 Confidential Information, other than that which is contained in pleadings,
 15 correspondence, and deposition transcripts, shall either (1) return such documents
 16 no later than 60 days after conclusion of this action to counsel for the Producing
 17 Party who provided such information, or (2) make reasonable efforts to destroy any
 18 confidential material found in any readily accessible data locations (including
 19 active electronic media, but excluding backup tapes and other inactive archival
 20 storage media) within 60 days, and certify in writing that the documents have been
 21 destroyed.

22 (j) Responsibility of Attorneys:

23 (i) The counsel for the parties are responsible for employing
 24 reasonable measures, consistent with this Order, to control duplication of, access to,
 25 and distribution of copies of Confidential Information.

26 (ii) The counsel for the parties are responsible for
 27 administering and keeping the executed original copy of Exhibit A pursuant to
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1 subsections 2(d)(i)(4) and (8) above.

2 (k) No Waiver:

3 (i) Nothing in Section 2 of this Order shall be deemed to
4 waive any applicable privilege or work product protection, or to affect the ability of
5 a party to seek relief for an inadvertent disclosure of material protected by privilege
6 or work product protection. Pursuant to the Court's authority under Federal Rule of
7 Evidence 502 and any other applicable law, rule, or legal principle, the inadvertent
8 production of documents or information subject to the attorney-client privilege or
9 work-product immunity shall not waive the privilege or immunity if, consistent
10 with Section 1 of this Order, a request for the return of such documents or
11 information is made promptly after the Producing Party learns of its inadvertent
12 production.

13 (ii) Nothing contained in this Order and no action taken
14 pursuant to it shall prejudice the right of any party to contest the alleged relevancy,
15 admissibility or discoverability of any documents or information, regardless of
16 whether such documents or information are designated "Confidential Information."

17 3. Inadvertent Failure to Designate:

18 A Producing Party's inadvertent failure to designate Confidential
19 Information pursuant to Section 2 of this Order shall not constitute a waiver of its
20 rights to subsequently make an appropriate designation, provided that the
21 Producing Party notifies the Receiving Party of the correct designation within ten
22 days of learning of its inadvertent failure to so designate.

23 A Receiving Party's use of such Discovery Material before receiving notice
24 of the inadvertent failure to designate shall not constitute a violation of this Order.
25 Upon receiving such notice, the Receiving Party shall treat such Discovery
26 Material according to its designation under the Protective Order. In the event the
27 Discovery Material has been distributed in a manner inconsistent with this
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1 designation, the Receiving Party will take the steps necessary to conform
2 distribution to the designation: *i.e.*, returning all copies in its possession, or notes
3 or extracts thereof, to the persons authorized to possess such documents. In the
4 event distribution has occurred to a person not under the control of the Receiving
5 Party, a request for return of the Discovery Material, and for an undertaking of
6 confidentiality, shall be made in writing. In the event the request is not promptly
7 agreed to in writing, or in the event there is no response, or in the event that the
8 Receiving Party deems the making of the request to be a futile act, the Receiving
9 Party shall promptly notify the Producing Party of the distribution and all pertinent
10 facts concerning it, including the identity of the person or entity not under the
11 control of the Receiving Party.

12 4. **Modification Permitted:**

13 Nothing in this Order shall prevent any party or third-party from seeking
14 modification of this Order or from objecting to discovery that it believes to be
15 otherwise improper.
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18 So ORDERED, this 29th day of November, 2012,

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21 Hon. Jean P. Rosenbluth

22 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANAHEIM MANUFACTURING
CO.,

Plaintiff,

v.

EMERSON ELECTRIC CO.,

Defendant.

Case No. CV 12-04528 DDP (JPRx)

**EXHIBIT A – DECLARATION OF
ACKNOWLEDGEMENT OF ORDER
GOVERNING INADVERTENT
DISCLOSURE AND THE
PROTECTION OF CONFIDENTIAL
DOCUMENTS AND MATERIALS**

I, _____, hereby declare and certify the
following to be true:

1. I have read and/or had explained to me by counsel Section 2 of the
Court's Order Governing Inadvertent Disclosure and the Protection of Confidential
Documents and Materials (the "Order") issued in connection with the above-
captioned matter. I understand the restrictions on my access to and use of
Confidential Information (as that term is used in the Order) in this matter, and I
agree to abide by the Order.

3. I understand that the restrictions on my use of Confidential
Information include:

a. that I will use Confidential Information only for the purpose of
preparing for this action and for no other purpose;

b. that I will not disclose Confidential Information to anyone,
except as permitted by the Order;

c. that I will use, store, and maintain Confidential Information in
such a way as to ensure its continued protected status; and

d. that, upon the termination of my participation in this action, I

1 will promptly return or make reasonable efforts to destroy all Confidential
2 Information and all notes, memoranda, or other materials containing Confidential
3 Information, as provided in the Order.

4 5. I am fully aware that my failure to comply with the terms of the Order
5 may constitute contempt of court and may subject me to sanctions.

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7 _____ Date: _____
8 Full Name [Typed or Printed]

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11 Signature
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